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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,481	04/27/2007	Martin Bunce	06275-509US1 101087-1P US	1607
26164	7590	07/24/2009	EXAMINER	
FISH & RICHARDSON P.C. P.O BOX 1022 MINNEAPOLIS, MN 55440-1022			YOUNG, RACHEL T	
		ART UNIT	PAPER NUMBER	
		4138		
			NOTIFICATION DATE	DELIVERY MODE
			07/24/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/579,481	BUNCE, MARTIN	
	<b>Examiner</b>	<b>Art Unit</b>	
	RACHEL T. YOUNG	4138	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 16 May 2006.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-8 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-8 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on 16 May 2006 is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .                                    |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/16/06. 3/10/09</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application |
|   | 6) <input type="checkbox"/> Other: _____ .                        |

## **DETAILED ACTION**

### ***Preliminary Amendment***

1. Receipt is acknowledged of papers submitted for applicant's preliminary amendment, which papers have been placed of record in the file.

### ***Priority***

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Specification***

3. The disclosure is objected to because of the following informalities: Page 1, line 14 recites "occlude he", which appears to be a misspelling of "occlude the". Page 1, line 24 recites "to be stand", which appears to be a misspelling of "to stand". Page 3, line 11 recites " flexible", which appears to be a misspelling of "flexibility". Page 4, line 2 recites "from been used", which appears to be a misspelling of "from being used".

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-3 and 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller et al (U.S. Patent No. 6182655 B1) in view of Dorner (U.S. Patent No. 627996).

As to claim 1, Keller teaches an inhaler (Fig. 1F) for dispensing doses (Col. 3, ll. 63) of medicament (Col. 3, ll. 64) from a container ("powder reservoir" Col. 8, ll. 3-4) under user activation (Col. 8, ll. 13-14) said inhaling comprising a body (150) (Fig. 1E) including a mouthpiece (900) (Fig. 1F) through which said medicament is dispensed (Col. 8, ll. 11-15) and a cap (950) (Fig. 1E) which can be placed in a position to substantially occlude said mouthpiece (Fig. 1 A) where said cap is attached to said body by a strap (960) (Fig. 1E) which pivots from said body (Fig. 1E and 1F) (Col. 8, ll. 10). Keller is silent regarding a cap being arranged to slide on a strap such that a cap must translate away from a mouthpiece prior to the pivoting of a strap. However, Dorner teaches a container comprising a cap (16) (Fig. 1) being arranged to slide on a strap (C) such that a cap must translate (Fig. 1 and 2) away from a mouthpiece (12) (Fig. 1) prior to the pivoting of a strap (Fig. 3). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Keller's device such that a cap being arranged to slide on a strap such that a cap must translate away from a mouthpiece prior to the pivoting of a strap, as taught by Dorner, for the purpose of allowing the cap to move to the open position easily and prevent the cap from being easily dislodged.

As to claims 2-3, Keller teaches that said mouthpiece projects from said body (Fig. 1A and 1E) (Col. 7, ll. 59-64), and said cap both occludes said mouthpiece (Fig. 1A) and overlies the projection of said mouthpiece (Fig. 1A).

As to claims 7-8, Keller teaches that said inhaler is a metered dose (“defined dose” Col. 1, ll. 28) inhaler (Fig. 1F) (Col. 1, ll. 6), and that the cap is attached to said strap by means of a lug (962) (Fig. 2B).

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Keller/Dorner in view of Beck et al. (U.S. Patent Pub. 4848612).

As to claim 4, Keller discloses the claimed invention except said inhaler is a plastic material wherein said strap and said body are molded as a unit. However, Beck teaches a dispensing container (10) (Fig. 3) that is a plastic (Col. 2, ll. 20) material wherein said strap and said body are molded as a unit (Col. 2, ll. 17-24). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Keller's device such that a plastic material wherein said strap and said body are molded as a unit, as taught by Beck, for the purpose of ease of manufacturing with low cost.

7. Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keller/ Dorner in view of Casper et al. (U.S. Patent No. 6357442 B1).

As to claims 5-6, Keller discloses the claimed invention except that a strap underlies said body and substantially follows the contours thereof, and a container is pressurized. However, Casper teaches an inhaler with a strap (216) (Fig. 3D) that underlies a body (204) (Fig. 3D) and substantially follows the contours thereof (Fig. 3C),

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and a container is pressurized (Col. 2, ll. 14-15). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Keller's device such that the strap underlies the body and substantially follows the contours thereof and that a container is pressurized, as taught by Casper, for the purpose of providing the mouthpiece protection against dirt or damage as well as producing atomized medicament.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to RACHEL T. YOUNG whose telephone number is (571) 270-1481. The examiner can normally be reached on Monday through Friday, 8 AM-5PM, Est., alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Melba Bumgarner can be reached on 571-272-4709. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. T. Y./  
Examiner, Art Unit 4138

/Quang D. Thanh/  
Supervisory Patent Examiner, Art  
Unit 4138